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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 09, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DUSTIN B.,<sup>1</sup>

Plaintiff,

v.

CAROLYN COLVIN, Acting  
Commissioner of Social Security,<sup>2</sup>

Defendant.

No. 4:24-CV-05075-EFS

**ORDER REVERSING THE ALJ'S  
DENIAL OF BENEFITS, AND  
REMANDING FOR FURTHER  
PROCEEDINGS**

<sup>1</sup> For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

<sup>2</sup> Carolyn Colvin became the Acting Commissioner of Social Security on November 30, 2024. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, and section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), she is hereby substituted for Martin O'Malley as the defendant.

1 Due to depression attention-deficit/hyperactivity disorder (ADHD),  
2 depression, anxiety, and bilateral shoulder impingement syndrome, Plaintiff  
3 Dustin B. claims that he is unable to work full-time and applied for supplemental  
4 security income benefits. He appeals the denial of benefits by the Administrative  
5 Law Judge (ALJ) on the grounds that the ALJ erred in relying on flawed vocational  
6 expert (VE) testimony at step five; the ALJ improperly analyzed the opinions of  
7 examining source Nora K. Marks, PhD; and the ALJ improperly assessed Plaintiff's  
8 credibility. As is explained below, the ALJ erred. This matter is remanded for  
9 further proceedings.

10 **I. Background**

11 In October 2018, Plaintiff filed an application for benefits under Title 16,<sup>3</sup>  
12 claiming disability beginning February 15, 2012, based on the physical and mental  
13 impairments noted above.<sup>4</sup> Plaintiff's claim was denied at the initial and  
14 reconsideration levels.<sup>5</sup> After the agency denied Plaintiff benefits, ALJ Marie  
15 Palachuk held a telephone hearing in November 2020, at which Plaintiff appeared  
16 with his representative.<sup>6</sup> Plaintiff testified, as well as two medical experts and a

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18 <sup>3</sup> AR 237-242. Plaintiff also filed a claim for benefits under Title 2, but the claim was  
19 previously remanded by this Court with regard to Title 16 claim only.

20 <sup>4</sup> AR 244-251, 281.

21 <sup>5</sup> AR 143, 152.

22 <sup>6</sup> AR 37-76.

vocational expert.<sup>7</sup> After the hearing ALJ Palachuk issued a decision denying benefits.<sup>8</sup> Plaintiff filed for review of the ALJ decision, and the Appeals Council denied review in July 2021.<sup>9</sup> Plaintiff filed timely suit in this Court, and on July 22, 2022, this Court entered an order remanding the case as to the Title 16 claim for further proceedings.<sup>10</sup> The Appeals Council issued a remand order consistent with the Court's order.<sup>11</sup> On January 31, 2024, ALJ Palahuck held a second telephone hearing, which was attended by Plaintiff's attorney and a vocational expert.<sup>12</sup> On April 8, 2024, ALJ Palachuk issued a second decision denying Title 16 benefits.<sup>13</sup>

The ALJ found Plaintiff's alleged symptoms were not entirely consistent with the medical evidence and the other evidence.<sup>14</sup> As to medical opinions, the ALJ found:

- The opinions of medical expert Nancy Winfrey, PhD, to be persuasive

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<sup>7</sup> *Id.*

<sup>8</sup> AR 12-36.

<sup>9</sup> AR 1-6.

<sup>10</sup> AR 749-769.

<sup>11</sup> AR 770-774.

<sup>12</sup> AR 705-717.

<sup>13</sup> AR 681-704. Per 20 C.F.R. § 416.920(a)-(g), a five-step evaluation determines whether a claimant is disabled.

<sup>14</sup> AR 690-692.

- The opinions of medical expert Darius Ghazi, MD, to be generally persuasive.
  - The opinions of William Drenguis, MD, to be somewhat persuasive.
  - The opinions of state agency physicians Greg Saue, MD, and Debra Baylor, MD, to be unpersuasive.
  - The opinions of state agency evaluators Kent Reade, PhD, and Shawn Horn, PsyD, to be persuasive.
  - The opinions of Gordon Heich, DO, to be unpersuasive.
  - The opinions of DSHS examining psychologist Nora Marks, PhD, to be unpersuasive.
  - The opinions of Robert Whitson, MD, to be unpersuasive.<sup>15</sup>

As to the sequential disability analysis, the ALJ found:

- Step one: Plaintiff had not engaged in substantial gainful activity since October 17, 2018, the application date.
  - Step two: Plaintiff had the following medically determinable severe impairments: bilateral shoulder impingement, right greater than left; depressive disorder; generalized anxiety disorder; and ADHD.
  - Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the

15 AR 693-694.

1 listed impairments, and specifically considered Listing 1.18, 12.04,  
2 120.06, and 12.11.

- 3 • RFC: Plaintiff had the RFC to perform light work with the following  
4 exceptions:

5 [Plaintiff] could occasionally crawl and climb ladders, ropes, or  
6 scaffolds; he could never reach or lift above shoulder level with  
7 both upper extremities; he could occasionally raise or suspend  
8 the arms out in front in the waist to shoulder area; he would  
9 need to avoid concentrated exposure to hazards; he could  
10 understand, remember, and carry out simple, routine tasks; he  
11 needs a predictable environment with no more than occasional  
12 changes; he should not be required to perform assembly-line or  
13 fast paced work; and he could have brief, superficial interaction  
14 with the public.

- 15 • Step four: Plaintiff is unable to perform his past relevant work as a  
16 fish processing laborer and a short order cook.  
17 • Step five: considering Plaintiff's RFC, age, education, and work  
18 history, Plaintiff could perform work that existed in significant  
19 numbers in the national economy, such as a router (DOT 222.587-  
20 038), small products assembler (DOT 706.684-022), and electronic  
21 accessories assembler (DOT 729.687-010).<sup>16</sup>

22 Plaintiff timely requested review of the ALJ's decision by this Court.<sup>17</sup>

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23 <sup>16</sup> AR 687-695.

<sup>17</sup> ECF No. 1.

## **II. Standard of Review**

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"<sup>18</sup> and such error impacted the nondisability determination.<sup>19</sup> Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>20</sup>

### III. Analysis

Plaintiff seeks relief from the denial of disability on three grounds. He argues the ALJ erred when evaluating the medical opinion of Dr. Marks, erred in

<sup>18</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. § 405(g).

<sup>19</sup> *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012), superseded on other grounds by 20 C.F.R. § 416.920(a) (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that “is inconsequential to the ultimate nondisability determination”).

<sup>20</sup> *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). See also *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner’s conclusion,” not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

1 assessing his subjective claims, and erred in accepting VE testimony regarding jobs  
2 at step five that was not based on the RFC which she ultimately formulated. As is  
3 explained below, the Court concludes that the ALJ consequentially erred in her  
4 evaluation of Dr. Marks' opinion but did not err by relying on the VE testimony .  
5 Additionally, the Court finds the remaining issue moot.

6 **A. Medical Opinion: Plaintiff establishes consequential error.**

7 Plaintiff argues that the ALJ erred in her evaluation of Dr. Marks' 2018  
8 opinions.<sup>21</sup> The Commissioner counter-argues that the ALJ properly considered  
9 that Dr. Marks' opinions were rendered before the relevant periods, that the  
10 opinions were on a "check-box form," that the 2018 opinions were made when  
11 Plaintiff was "admittedly using opioids and methamphetamine," and that other  
12 opinions were inconsistent with the opinions of Dr. Winfrey.

13 1. Standard

14 The ALJ was required to consider and evaluate the persuasiveness of the  
15 medical opinions and prior administrative medical findings.<sup>22</sup> The factors for  
16 evaluating the persuasiveness of medical opinions and prior administrative  
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18 <sup>21</sup> An ALJ must consider and articulate how persuasive she found each medical  
19 opinion, including whether the medical opinion was consistent with and supported  
20 by the record. 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th  
21 Cir. 2022).

22 <sup>22</sup> 20 C.F.R. § 416.920c(a), (b).

1 medical findings include, but are not limited to, supportability, consistency,  
2 relationship with the claimant, and specialization.<sup>23</sup> Supportability and consistency  
3 are the most important factors,<sup>24</sup> and the ALJ must explain how she considered the  
4 supportability and consistency factors when reviewing the medical opinions and  
5 support her explanation with substantial evidence.<sup>25</sup> The ALJ may consider, but is  
6 not required to discuss the following additional factors: the source's relationship to  
7 Plaintiff such as length of the treatment, purpose of the treatment relation and  
8 whether the source examined Plaintiff, as well as whether the source had advanced  
9 training or experience to specialize in the area of medicine in which the opinion  
10 was being given.<sup>26</sup> When considering the ALJ's findings, the Court is constrained to  
11 the reasons and supporting explanation offered by the ALJ.<sup>27</sup>

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14 <sup>23</sup> 20 C.F.R. § 416.920c(c)(1)–(5).

15 <sup>24</sup> *Id.* § 416.920c(b)(2).

16 <sup>25</sup> *Id.* § 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th at 785 (“The agency must  
17 articulate . . . how persuasive it finds all of the medical opinions from each doctor  
18 or other source and explain how it considered the supportability and consistency  
19 factors in reaching these findings.”) (cleaned up).

20 <sup>26</sup> *Id.*

21 <sup>27</sup> See *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (recognizing court  
22 review is constrained to the reasons the ALJ gave).

1           2.       Relevant Testimony

2           a.       *Plaintiff*

3           On November 5, 2020, Plaintiff appeared to testify at his first hearing before  
4 ALJ Marie Palachuk but he did not appear for the second hearing.<sup>28</sup> At the first  
5 hearing before ALJ Palachuk, Plaintiff was asked if he had issues with his arms  
6 and shoulders in the last couple years.<sup>29</sup> He said that he had quite a few issues  
7 with his right, and his left arm hurt as well but improved after surgery.<sup>30</sup> He said  
8 he could finish washing a sink of dishes but that it was be painful.<sup>31</sup> He said it  
9 would be irritating within 10 to 15 minutes, but that he usually will “tough it out”  
10 and that it affects his performance.<sup>32</sup> He said that when working at Shari’s  
11 restaurant he was a dishwasher and that he would not be able to do the job now  
12 because he was there for less than 2 months and had to quit early a lot because of  
13 pain.<sup>33</sup> He said he left because the job was physical and because he had a hard time  
14 getting along with the manager and others there.<sup>34</sup> Plaintiff said he was never able

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<sup>28</sup> AR 37-76, 705-717.

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<sup>29</sup> AR 61.

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<sup>30</sup> *Id.*

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<sup>31</sup> AR 62.

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<sup>32</sup> AR 63.

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<sup>33</sup> AR 63-64.

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<sup>34</sup> AR 64.

1 to keep a job for more than 6-8 months because he would work with pain but was  
2 not able to get along with others.<sup>35</sup>

3 Plaintiff said he has good days and bad days emotionally and that his  
4 feelings whether good or bad would be intense and he would get very excitable and  
5 not able to control himself.<sup>36</sup> He said he lived with his parents and tried to help  
6 around the house as much as he could.<sup>37</sup> He said on average he had 3 bad days a  
7 week in which he was feeling down and lacked energy and could not help as  
8 much.<sup>38</sup>

9 The ALJ asked Plaintiff about his work at Kanaway Seafood in 2006 and  
10 2007.<sup>39</sup> He said it was a seafood processing plant and he was a salt operator, who  
11 turned the salt machine on and off.<sup>40</sup> He said that before that he worked for a  
12 seafood restaurant named Alaska Seafood as a line cook, making dinners and  
13 smaller meals.<sup>41</sup> He said it was a short order cook position.<sup>42</sup>

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15 <sup>35</sup> AR 64-65.

16 <sup>36</sup> AR 65.

17 <sup>37</sup> AR 65-66.

18 <sup>38</sup> AR 66.

19 <sup>39</sup> AR 67.

20 <sup>40</sup> AR 68.

21 <sup>41</sup> AR 68-69.

22 <sup>42</sup> AR 69.

1                   b.        Dr. Nancy Winfrey

2                  Dr. Winfrey stated that she reviewed Plaintiff's file and that the most  
3 important record was a July 2015 record indicating "current meth use" in Exhibit  
4 17F and that she was skeptical of the April 2014 diagnosis of ADHD and bipolar  
5 disorder noted in Exhibit 14F given the meth use noted in Exhibit 17F.<sup>43</sup> She also  
6 noted that an August 2018 DSHS evaluation noted anxiety disorder, depressive  
7 disorder, and an opioid-related disorder in remission, which she interpreted to be a  
8 prescription pain addiction in addition to the methamphetamine use.<sup>44</sup> She stated  
9 that the diagnosis of remission was based on self-reports and noted that in her  
10 2014 evaluation the examiner, Dr. Marks, did not note that the opioid problem was  
11 in remission.<sup>45</sup> Dr. Winfrey said the only evaluation performed in the relevant  
12 period was Dr. Marks' August 2018 evaluation at Exhibit 14F.<sup>46</sup> Dr. Winfrey noted  
13 that there was no indication of meth use then but that there had been an  
14 admission of use in the fall or summer of 2017.<sup>47</sup> When the ALJ clarified that  
15 Plaintiff was incarcerated in Fall 2017 through January 2018 and again in summer  
16 of 2018, Dr. Winfrey opined that there was an increased likelihood that he was

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<sup>43</sup> AR 49-50.

19                  <sup>44</sup> AR 50-51.

20                  <sup>45</sup> AR 51.

21                  <sup>46</sup> AR 52.

22                  <sup>47</sup> AR 52-53.

1 clean and sober during the evaluation.<sup>48</sup> She opined depression and anxiety and  
2 ADHD were medically determinable impairments.<sup>49</sup>

3 Dr. Winfrey opined that in the domain of understand, remember, and apply  
4 information Plaintiff had a mild limitation.<sup>50</sup> She opined that with regard to the  
5 domain of interacting with others Plaintiff had a moderate limitation without  
6 drugs or alcohol.<sup>51</sup> As to the domain of concentrate, persist, and maintain pace, she  
7 opined there would be a marked limitation without medication and a moderate  
8 limitation with medication.<sup>52</sup> As to the domain of adapting or managing oneself,  
9 Dr. Winfrey opined that Plaintiff had a moderate to marked limitation.<sup>53</sup> She said  
10 that Plaintiff was easily distracted and should be placed in a predictable  
11 environment with little change and no fast-paced work, and have only brief,  
12 superficial contact with the public.<sup>54</sup> Dr. Winfrey opined that Plaintiff would not be  
13 off-task more than normal if limited to routine, simple tasks with medication.<sup>55</sup>

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15 <sup>48</sup> AR 53.

16 <sup>49</sup> AR 54-55.

17 <sup>50</sup> AR 54.

18 <sup>51</sup> *Id.*

19 <sup>52</sup> AR 55.

20 <sup>53</sup> *Id.*

21 <sup>54</sup> AR 56.

22 <sup>55</sup> AR 57.

Plaintiff's counsel pointed out to Dr. Winfrey that Dr. Marks stated in her report that Plaintiff's impairments were not caused by substance abuse and that they would persist if sober for 60 days.<sup>56</sup> Dr. Winfrey agreed.<sup>57</sup> Dr. Winfrey clarified that she was making the assumption that Plaintiff's evaluation by Dr. Marks was conducted while he was clean and sober.<sup>58</sup>

### 3. Dr. Marks' Report and Opinion

7 On August 17, 2018, N.K. Marks, PhD, examined Plaintiff at the request of  
8 the Washington State Department of Social and Health Services (DSHS).<sup>59</sup>  
9 Dr. Marks had previously examined Plaintiff at DSHS's request in April 2017.<sup>60</sup>  
10 Dr. Marks noted that in 2017 Plaintiff had been diagnosed with anxiety disorder,  
11 depressive disorder, ADHD with combined presentation, and an opioid disorder but  
12 that he had brought with him a certificate of completion for drug treatment  
13 through ABHS.<sup>61</sup> Dr. Marks' report was detailed with the results of a clinical  
14 interview detailing psychosocial history, medical and treatment history,

56 AR 58

57 *Id.*

58 AR 59-60.

59 AR 651-657.

60 AR 570-575.

61 A.D. 651

1 living; her clinical findings; her opined diagnoses; the results of a mental status  
2 examination; a prognosis and treatment plan; additional treatment  
3 recommendations; and a medical source statement.<sup>62</sup> Dr. Marks noted that  
4 Plaintiff reported that he had lapsed in the fall of 2017 but had attended treatment  
5 for 48 days and was currently clean and sober.<sup>63</sup> She noted that he was presently  
6 homeless and needed a place to sleep to stabilize his condition.<sup>64</sup>

7 Dr. Marks noted that Plaintiff's score on the Beck Depression Inventory was  
8 a 34, which placed him in a severe range of depression and that his score on the  
9 Beck Anxiety Inventory was a 16, which placed him in a moderate range for  
10 anxiety.<sup>65</sup> Dr. Marks noted that as far as ADHD, Plaintiff was very unfocused and  
11 struggled to stay on task, needed things repeated back to him, and his results on  
12 the Trail Making Test indicated impulsivity.<sup>66</sup> Dr. Marks diagnosed anxiety  
13 disorder, depressive disorder, ADHD with combined presentation, and an opioid  
14 disorder in remission.<sup>67</sup>

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<sup>62</sup> AR 651-657.

18 <sup>63</sup> AR 652.

19 <sup>64</sup> *Id.*

20 <sup>65</sup> AR 653.

21 <sup>66</sup> AR 654.

22 <sup>67</sup> *Id.*

1 On examination, Plaintiff presented showing attempts to look groomed but  
2 was wrinkled, as he was homeless; his speech was fairly well organized and he was  
3 cooperative but had minimal eye contact; his mood was depressed and anxious; he  
4 was agitated; his thinking was confused and showed active symptoms of ADHD; he  
5 was oriented and had no delusions; his memory and fund of knowledge were within  
6 normal limits; his abstract thought was within normal limits; and his  
7 concentration was not within normal limits, as he was distractible during the  
8 examination and struggled to maintain focus.<sup>68</sup>

9 Dr. Marks opined that Plaintiff had a moderate limitation in performing the  
10 following work activities: understand, remember, and persist in tasks requiring  
11 detailed instructions; perform routine tasks without special supervision; make  
12 simple work-related decisions; be aware of hazards; maintain appropriate behavior;  
13 complete a normal workday or work week without interruption; and set realistic  
14 goals.<sup>69</sup> She opined that Plaintiff would have a moderate to marked limitation in  
15 asking simple questions or asking for assistance.<sup>70</sup> She opined that Plaintiff would  
16 have a marked limitation in completing the following work activities: perform  
17 activities within a schedule, maintain attendance, and be punctual; learn new  
18 tasks; adapt to changes in a routine work setting; and communicate effectively in a

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<sup>68</sup> AR 655-657.

21<sup>69</sup> AR 654-655.

22<sup>70</sup> AR 654.

1 work setting.<sup>71</sup> She opined that the overall severity of the impairments was severe,  
2 and that the impairments were not the result of substance use and would persist  
3 following 60 days of sobriety.<sup>72</sup> Dr. Marks recommended vocational training,  
4 counseling, assistance with housing, case management, and monitoring for  
5 decompensation.<sup>73</sup> She stated that Plaintiff is intelligent and shows promise if he  
6 can “get his life together” and that he had a long way to go in staying sober and  
7 dealing with his depression and anxiety.<sup>74</sup>

8       4.     Analysis

9           The ALJ found Dr. Marks’ opinions to be unpersuasive and articulated the  
10 following reasoning:

11           The undersigned finds the opinions of Nora Marks, Ph.D., in an April  
12 2017 and August 2018 psychological examination unpersuasive (6F;  
13 14F). These opinions are also checkbox forms with little meaningful  
14 explanation, and both occurred before the relevant period. The exams  
15 also took place when the claimant was admittedly using opioids and  
16 methamphetamine, and it accordingly does not reflect his functioning  
17 since attaining sobriety in late 2018. In addition, Dr. Marks’ opinion is  
18 inconsistent with her own mental status findings and the record as a  
19 whole. Notably, an evaluator at the Department of Social and Health  
20 Services (DSHS) concluded Dr. Marks’ opinion was not supported by  
21 her own exam (6F/13). Her opinion is also inconsistent with the  
22 assessments of the psychologists at the state agency level of disability

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23           <sup>71</sup> *Id.*

24           <sup>72</sup> AR 655.

25           <sup>73</sup> *Id.*

26           <sup>74</sup> *Id.*

1 determination and Dr. Winfrey, both of whom had the benefit of  
2 reviewing more of the record.<sup>75</sup>

3 Initially, the Court notes that the Commissioner's argument that Dr. Marks'  
4 opinion was rendered before the relevant period is error. Dr. Marks' August 2018  
5 examination of Plaintiff took place only several months prior to the relevant period,  
6 which begins October 17, 2018. Moreover, the Commissioner is offering a reason to  
7 justify the ALJ's decision that the ALJ herself never articulated.

8 The Court will address each of the four reasons given by the ALJ to find the  
9 opinions unpersuasive: that it was rendered on a check-box form; that it was based  
10 on an examination performed during a time that Plaintiff was using opioids; that  
11 Dr. Marks' opinions are inconsistent with her own findings and the record as a  
12 whole; and that it is inconsistent with the opinions of Dr. Whitney and the state  
13 agency evaluators who had an opportunity to review the record.

14 First, the Court notes that while portions of Dr. Marks' report were rendered  
15 in a check-box format, it is a gross mischaracterization to call Dr. Marks' report "a  
16 check-box form." Indeed, it is a seven-page report that contains a thorough and  
17 detailed narrative regarding psychosocial history, medical and treatment history,  
18 educational and work history, substance abuse history, and activities of daily  
19 living.<sup>76</sup> Dr. Marks indicated that she administered three separate tests to Plaintiff

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<sup>75</sup> AR 694.

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<sup>76</sup> AR 651-657.

in addition to conducting a mental status examination: the Becks Depression Inventory, the Becks Anxiety Inventory, and the Trail Making Test, parts A and B.<sup>77</sup> She explained the symptoms for which she based her diagnosis and with regard to her diagnosis of ADHD she stated:

**Previously:** Very unfocused, struggled to stay on task. He needed things repeated back multiple times. He forgot portions of directions. On the Trail Making Test, he completed Part A in 20 minutes with one error and Part B in 37 minutes with 2 errors. His results place him in the average range in terms of completion times but his number of errors do suggest a certain amount of impulsivity.

**Current:** He is now on meds for ADHD and was much more focused today but still has considerable difficulty with organization. He is getting better but stable housing would help considerably.<sup>78</sup>

While the Court is aware that in some instances it is appropriate to limit the persuasiveness of opinions rendered on fill-in forms that offer little narrative and explanation, the Court concludes that this is not an accurate description of Dr. Marks' report.

Additionally, the Court finds no support for the statement made by the ALJ and repeated by the Commissioner that Dr. Marks examined Plaintiff when he was “admittedly using opioids and methamphetamines.”<sup>79</sup> To the contrary, Plaintiff presented to Dr. Marks with proof that he had completed a drug program in

77 AR 653-654.

78 AR 654.

79 AR 694.

1 January 2018, eight months prior to the examination.<sup>80</sup> Dr. Marks stated that  
2 Plaintiff's substance use was "[i]n remission. He completed treatment and is still  
3 clean and sober."<sup>81</sup> Dr. Winfrey agreed that there was a presumption that the  
4 examination took place when Plaintiff was clean and sober.<sup>82</sup>

5 The ALJ's reasoning as to the supportability and consistency of Dr. Marks'  
6 opinions is wholly deficient. Her articulated reasoning is conclusory at best and  
7 merely states:

8 In addition, Dr. Marks' opinion is inconsistent with her own mental  
9 status findings and the record as a whole. Notably, an evaluator at the  
Department of Social and Health Services (DSHS) concluded  
Dr. Marks' opinion was not supported by her own exam (6F/13).<sup>83</sup>

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11 Lastly, the ALJ 's reasoning that Dr. Winfrey and the state agency  
12 evaluators had a chance to review the record fails to consider that they did not  
13 have an opportunity to examine Plaintiff, as Dr. Marks did.

14 The ALJ must articulate her findings and cite to supporting evidence in a  
15 way that permits the Court to meaningfully review the ALJ's findings.<sup>84</sup> While an  
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18<sup>80</sup> AR 651.

19<sup>81</sup> AR 654.

20<sup>82</sup> AR 59-60.

21<sup>83</sup> AR 694.

22<sup>84</sup> See *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996); *Embrey v. Bowen*, 849  
23 F.2d 418, 421-22 (9th Cir. 1988) (requiring the ALJ to identify the evidence

1 ALJ need not address every piece of evidence, an ALJ “may not ignore significant  
2 probative evidence that bears on the disability analysis.”<sup>85</sup> Here, the ALJ failed to  
3 do so. The Court concludes that remand is warranted for the ALJ to properly  
4 consider Dr. Marks’ opinions and to evaluate the record as a whole and to more  
5 meaningfully articulate the findings.

6       5.     Summary

7              Because the ALJ did not give valid reasons for her evaluation of the medical  
8 opinions of Dr. Marks, a remand is warranted.

9       **B. Plaintiff's Subjective Complaints: The Court finds the issue moot.**

10          Plaintiff argues the ALJ failed to properly assess his subjective complaints.  
11 As discussed above, the ALJ failed to consider the medical record as a whole when  
12 considering the medical opinions. Because the Court has remanded the case for  
13 consideration of the record as a whole, the ALJ will be required to consider the  
14 credibility of Plaintiff's subjective complaints.

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17 supporting the found conflict to permit the court to meaningfully review the ALJ's  
18 finding); *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require the  
19 ALJ to build an accurate and logical bridge from the evidence to her conclusions so  
20 that we may afford the claimant meaningful review of the SSA's ultimate  
21 findings.”).

22       <sup>85</sup> *Kilpatrick v. Kijakazi*, 35 F.4th 1187, 1193 (9th Cir. 2022).  
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1 C. Step Five Evaluation: Plaintiff fails to establish consequential error.

2 Because the ALJ erred in her evaluation of the medical opinions, the Court  
3 will only briefly address this issue. In his brief, Plaintiff argues that the ALJ erred  
4 at step five because she asked the VE if an individual performing the job of router  
5 or small product assembler would “be required to spend a significant amount of  
6 time raising or suspending his arms” but changed the wording in her decision to  
7 “occasionally raise or suspend arms.”<sup>86</sup>

8 Plaintiff is correct that the ALJ posed a question to the VE of whether the  
9 person performing those two jobs would be required to “spend a significant amount  
10 of time raising or suspending his arms.”<sup>87</sup> However, Plaintiff fails to consider the  
11 statement in its proper context.

12 The following exchange took place between the ALJ and the VE:

13 ALJ: So, what the District Court said was, quote, common  
14 experience indicates that an occupation in which a person stands or  
15 sits on a stool and reaches out to a conveyor belt to sort apples  
16 involves a significant amount of raising and/or suspending of the  
arms as compared to typing on a keyboard or answering a telephone  
from a seated position which generally involves minimal shoulder  
movement.

17 When answering the ALJ's follow-up question about the keyboard  
18 and phone tasks, Dr. Ghazi did not deviate from his earlier testimony  
19 that plaintiff was limited to occasionally lifting his arms to reach out  
in front of his body between waist and shoulder level. That is not  
actually what the doctor said. Counsel asked him, as I said, about

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<sup>86</sup> ECF No. 6, p. 11-12, quoting AR 689, 712

22 <sup>87</sup> AR 712.  
23

1 reaching on a conveyor belt and the doctor said, well he's basically  
2 limited to waist level.

3 So, with that background now, Mr. Stutz, I'm going to ask you with  
4 regards to these jobs that you gave me, the router, the marker and  
5 the assembly small products I, would the individual performing that  
job be required to spend a significant amount of time raising or  
suspending his arms as compared to typing on a keyboard or  
answering a telephone?

6 VE: No, none of those jobs. The marker – let me work on the marker  
for just a second.

7 VE: So, the marker there would be more outreach, yes. The marker  
8 would move up and you would be between the waist and shoulder  
but not above shoulder. The other jobs, no.

9 ALJ: And would that happen on a more than an occasional basis?

10 VE: I think I would like to say, yes, it would on the marker...<sup>88</sup>

11  
12 When read in the proper context it is clear that the ALJ advised the VE that  
13 Dr. Ghazi opined that Plaintiff was limited to no more than occasional reaching  
14 between the waist and shoulder. It is also clear that the VE testified that the jobs  
15 of small product assembler and router would involve only occasional reaching but  
16 the job of marker, which he replaced with the alternate job of electrical accessories  
17 assembler would require frequent reaching. It is reasonably clear that all three of  
18 the jobs ultimately provided by the VE and cited in the ALJ's decision were able to  
19 be performed with no more than occasional reaching between the waist and

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22 <sup>88</sup> AR 711-712.  
23

1 shoulders. For that reason, the Court concludes this issue need not be addressed  
2 on remand.

3 **D. Remand for Further Proceedings**

4 Plaintiff submits a remand for payment of benefits is warranted. The  
5 decision whether to remand a case for additional evidence, or simply to award  
6 benefits, is within the discretion of the court.”<sup>89</sup> When the court reverses an ALJ’s  
7 decision for error, the court “ordinarily must remand to the agency for further  
8 proceedings.”<sup>90</sup>

9 The Court finds that further development is necessary for a proper disability  
10 determination. Here, it is not clear what, if any, additional limitations are to be  
11 added to the RFC with proper consideration of Dr. Marks’ opinions. Therefore, the  
12 ALJ should properly consider the opinion evidence and make findings at each of  
13 the five steps of the sequential evaluation process.

14 **IV. Conclusion**

15 Accordingly, **IT IS HEREBY ORDERED:**

16 \_\_\_\_\_  
17 <sup>89</sup> *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,  
18 761 F.2d 530 (9th Cir. 1985)).

19 <sup>90</sup> *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595  
20 (“[T]he proper course, except in rare circumstances, is to remand to the agency for  
21 additional investigation or explanation”); *Treichler v. Comm'r of Soc. Sec. Admin.*,  
22 775 F.3d 1090, 1099 (9th Cir. 2014).

1. The ALJ's nondisability decision is **REVERSED**, and this matter is **REMANDED** to the Commissioner of Social Security for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).
2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 6 and 10**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and de copies to all counsel.

DATED this 9<sup>th</sup> day of January 2025.

*Edward F. Shea*  
EDWARD F. SHEA  
Senior United States District Judge